

GOVERNMENT OF THE DISTRICT OF COLUMBIA
D.C. Department of Human Resources

District Personnel Manual Issuance System

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DPM Chapter(s) **39**

DPM Instruction No. 39-1

SUBJECT: Mandatory Drug and Alcohol Testing of
Employees who Serve Children and Youth –
Policy

Date: June 10, 2008

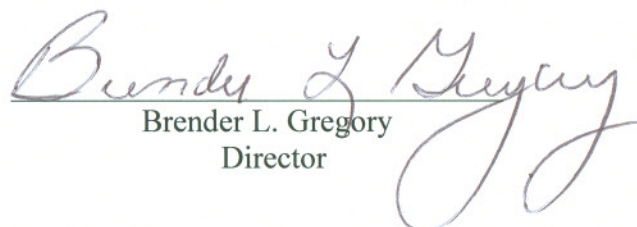
The document attached shall constitute the *Policy for Mandatory Drug and Alcohol Testing of Employees who Serve Children and Youth (Policy)*.

The *Policy* is issued by the D.C. Department of Human Resources (DCHR) pursuant to the provisions of Title I of the Child and Youth, Safety and Health Omnibus Amendment Act of 2004 (Act), effective April 13, 2005 (D.C. Law 15-353, D.C. Official Code § 1-620.31 *et seq.*) (2006 Repl.), as amended by section 4 (b) of the Anti-Drunk Driving Clarification Amendment Act of 2006, effective March 2, 2007 (D.C. Law 16-195; D.C. Official Code § 1-620.33) (2007 Supp.).

The regulations implementing the provisions of the Act are contained in Chapter 39 of the D.C. personnel regulations, Testing for the Presence of Controlled Substances and Alcohol.

The listing of the positions subject to drug and alcohol testing under the Act is contained in DPM Instruction No. 4-5, dated May 9, 2008. Both the regulations and DPM Instruction No. 4-5 may be accessed on the DCHR's website at www.dchr.dc.gov by clicking the "District Personnel Manual" link, then clicking the "Title" link (for Chapter 39), and the "Issuances" link (for the DPM instruction) for Chapter 4 of the regulations.

The *Policy* shall become effective on **Tuesday, June 10, 2008**.


Brender L. Gregory
Director

Attachment:

- *Policy for Mandatory Drug and Alcohol Testing of Employees who Serve Children and Youth*
(Issued 6/10/08)

Note: DPM Instructions that are strictly procedural in nature have direct applicability only to agencies and employees under the personnel authority of the Mayor. Other personnel authorities or independent agencies may adopt any or all of these procedures or guidance materials for agencies and employees under their respective jurisdictions. [See DPM Chapter 2, Part II, Subpart I, § 1.3]

Inquiries: Policy & Planning Administration, DCHR (202) 442-9644

Distribution: Heads of Departments and Agencies, HR Advisors, and DPM Subscribers

Retain Until Superseded

GOVERNMENT OF THE DISTRICT OF COLUMBIA
D.C. Department of Human Resources

**POLICY FOR MANDATORY DRUG
AND ALCOHOL TESTING OF
EMPLOYEES WHO SERVE
CHILDREN OR YOUTH**

June 10, 2008



Government of the District of Columbia
Adrian M. Fenty, Mayor

POLICY FOR MANDATORY DRUG AND ALCOHOL TESTING OF EMPLOYEES WHO SERVE CHILDREN OR YOUTH

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Policy for Mandatory Drug and Alcohol Testing of Employees who Serve Children or Youth

I. PURPOSE AND AUTHORITY

The Policy for Mandatory Drug and Alcohol Testing of Employees who Serve Children or Youth (Policy) is hereby issued by the D.C. Department of Human Resources (DCHR) for the purpose of informing covered employees of the requirements of the Drug and Alcohol Testing Program for Safety-Sensitive Positions (Program); and to allow each covered employee one (1) opportunity to seek treatment prior to testing if he or she has a drug or alcohol problem.

Statutory authority

Title I of the Child and Youth, Safety and Health Omnibus Amendment Act of 2004, effective April 13, 2005 (D.C. Law 15-353, D.C. Official Code § 1-620.31 *et seq.*) (2006 Repl.), as amended by section 4 (b) of the Anti-Drunk Driving Clarification Amendment Act of 2006, effective March 2, 2007 (D.C. Law 16-195; D.C. Official Code § 1-620.33) (2007 Supp.).

Regulatory authority

Sections 3901 through 3910 and 3999 of Chapter 39 of the D.C. Personnel Regulations, Testing for the Presence of Controlled Substances and Alcohol.

II. POLICY

It shall be the policy of the District government to subject to drug and alcohol testing each District government employee who, as part of the performance of his or her official job duties, has direct contact with children and youth; is entrusted with the direct care and custody of children or youth; and whose performance of his or her duties in the normal course of employment may affect the health, welfare, or safety of children or youth.

For the purposes of the Program and this Policy, any position with duties and responsibilities as described above shall be considered a "*safety-sensitive position*." An employee occupying a *safety-sensitive position* shall be considered a "*covered employee*."

III. SCOPE

This Policy outlines the District government's rules and procedures for drug and alcohol testing for covered employees. Covered employees will be subjected to drug and alcohol testing based on the nature of their positions. Additionally, this Policy outlines the manner in which drug and alcohol testing under the Program will be conducted.

IV. GENERAL POLICY STATEMENT

The District government has established the Program for employees in safety-sensitive positions. This Program is separate and apart from the testing program for the presence of alcohol and controlled substances applicable to District government employees who drive commercial motor vehicles or who are candidates for such employment, also

known as the "*Testing Program of Drivers of Commercial Motor Vehicles*" and implemented pursuant to federal regulations, D.C. Official Code § 1-620.11, and section 3900 of Chapter 39 of the regulations.

The overall goals of the Program are to protect the children and youth served by the District government by ensuring a safe, drug and alcohol-free work environment and reduce the potential for accidents and injuries to such children and youth.

Covered employees are expected and required to report to work fit for duty and able to perform their job duties throughout the workday. To this end, they shall comply with the requirements for drug and alcohol testing as set forth in this Policy. A confirmed positive drug test result, positive alcohol test, or a refusal to submit to a drug or alcohol test shall be grounds for termination of employment.

To the extent possible, the Employee Assistance Program (EAP), a counseling program for troubled employees established pursuant to D.C. Official Code § 1-620.07, will be utilized as a tool to assist covered employees to overcome drug or alcohol problems.

V. DISTRICT GOVERNMENT EMPLOYEES SUBJECT TO TESTING UNDER THE PROGRAM

New hires (appointees) and District government employees shall be subject to drug and alcohol testing under the Program as follows:

- (1) An appointee (new hire) to a safety-sensitive position with a covered District government agency;
- (2) An employee in a safety-sensitive position who has a reasonable suspicion referral;
- (3) A post-accident District government employee in a safety-sensitive position, as soon as reasonably possible after the accident;
- (4) Covered employees shall also be subjected to random testing;
- (5) A covered employee who has been detailed to a non safety-sensitive position after disclosing a drug problem (see Section VIII of this Policy) shall be subject to return-to-duty testing upon completion of the counseling and rehabilitation program (or *Treatment Contract*) and prior to resuming safety-sensitive duties; and
- (6) A covered employee who has been detailed to a non safety-sensitive position after disclosing a drug problem (see Section VIII of this Policy) shall be subject to follow-up testing to ensure that the employee is not exhibiting any of the prohibited conduct listed in Section X of this Policy.

VI. COVERED DISTRICT GOVERNMENT AGENCIES

The following subordinate agencies shall be covered under the Program, on the basis that each one of these agencies, as a whole or certain components thereof, has safety-sensitive positions:

- Department of Human Services;
- Department of Health;

- Department of Parks and Recreation;
- Fire and Emergency Medical Services Department;
- Metropolitan Police Department;
- Traffic Safety Administration within the District Department of Transportation;
- Office of the State Superintendent of Education;
- Department of Youth Rehabilitation Services;
- Department of Employment Services;
- Department of Mental Health;
- Child and Family Services Agency;
- Department of Disability Services;
- D.C. Public Schools;
- D.C. Public Library; and
- Any other independent or subordinate District government agency subject to Chapter 39 of the regulations, including an agency which, as a result of a permanent or a temporary change to its mission such as may be caused by reorganization.

VII. STANDARDS FOR THE IDENTIFICATION OF POSITIONS SUBJECT TO TESTING

- A. Upon consulting with the head of a covered District government agency (or designee), the personnel authority will identify and determine which positions in the agency shall be designated safety-sensitive positions subject to mandatory drug and alcohol testing under the Program.
- B. In identifying the safety-sensitive positions, the personnel authority will ensure that the duties and responsibilities of each position require the provision of services that affect the health, safety, and welfare of children or youth or services for the benefit of children or youth, including but not limited to at least one (1) of the following duties and responsibilities:
 - (1) Childcare duties;
 - (2) Recreational activities;
 - (3) Delinquency prevention and control services, including custody, security, supervision, and residential and community support services for committed and detained juvenile offenders;
 - (4) Educational activities;

- (5) Individual counseling;
- (6) Group counseling;
- (7) Assessment, case management, and support services;
- (8) Psychiatric and psychological assessment services;
- (9) Developmental, speech, and language evaluation services;
- (10) Diagnostic evaluation and treatment services;
- (11) Childhood development services;
- (12) Medical or clinical services;
- (13) Therapeutic services, including individual and group therapy, and play therapy;
- (14) Prevention and intervention services;
- (15) Mentoring services;
- (16) Youth care services;
- (17) Healthcare services, including medical, behavioral, mental health, dental, vision, nutrition, or developmental services;
- (18) Cultural enrichment services;
- (19) Public safety services, including counseling or education intervention services about safety, crime prevention, fire safety, or youth problem-solving;
- (20) Youth employment services; or
- (21) Driving a motor vehicle to transport children or youth.

C. Vacancy Announcements for Safety-Sensitive Positions

Position vacancy announcements for positions identified and designated as safety-sensitive shall include a **statement** informing each applicant that:

- (1) The position for which he or she is applying has been identified and designated as a safety-sensitive position subject to mandatory drug and alcohol testing;
- (2) If tentatively selected for the safety-sensitive position, he or she will be required to submit to drug testing prior to appointment, and that appointment to the position will be contingent upon a negative drug test result; and
- (3) Once hired into a safety-sensitive position, he or she shall be subject to mandatory random testing.

VIII. EMPLOYEE NOTIFICATION

- A. Each employee in a safety-sensitive position shall receive formal notification, in writing, that he or she is subject to drug and alcohol testing before any testing is conducted. The employee notification shall be issued at least thirty (30) days in advance of any drug or alcohol testing taking place.
- B. Along with the Employee Notification Letter and this Policy, a *Frequently Asked Questions Sheet* will be distributed to each covered employee prior to the start of any drug and alcohol testing, and to each person subsequently hired into a safety-sensitive position. Covered employees may also view the Policy via the *Internet*.
- C. Right to Seek Drug or Alcohol Treatment upon Formal Notification of the testing Requirements and Prior to Testing
 - (1) Upon issuance of the Employee Notification Letter and Policy, and prior to placing a covered employee in a random testing pool, the covered employee shall have one (1) opportunity to seek treatment if he or she has a drug or alcohol problem.
 - (2) Within thirty (30) days of receipt of the Employee Notification Letter and Policy, a covered employee with a drug or alcohol problem may self-refer to the EAP. The employee shall notify his or her supervisor of the drug or alcohol problem; shall be allowed to undergo and complete a counseling and rehabilitation program; and the disclosure of the drug or alcohol problem shall not affect the employee's employment status. At the end of the thirty-day (30-day) initial notification period, all covered employees, excluding those who have notified their supervisor of a drug or alcohol problem and are undergoing a counseling and rehabilitation program, will be placed in the random testing pool.
 - (3) An employee who acknowledges having a drug or alcohol problem after receiving the Employee Notification Letter shall be placed in the random testing pool after successful completion of the counseling and rehabilitation program.
 - (4) The employing agency of a covered employee who acknowledges having a drug or alcohol problem after receiving the Employee Notification Letter shall immediately detail the employee to a non safety-sensitive position while he or she completes the counseling and rehabilitation program.

IX. DEFINITIONS

The following terms shall have the meaning ascribed in this Policy:

1. ***Accident*** – Any incident involving a motor vehicle and a covered employee, where one (1) or more of the following occurs:
 - There is loss of human life;
 - One (1) or more motor vehicles (one (1) of which may be a private vehicle) incurs disabling damage that may require the motor vehicle to be transported from the scene by a tow truck or other motor vehicle;

- One (1) or more employees, citizens, residents, or pedestrians receive bodily injury which requires immediate medical attention at or away from the scene;
 - A covered employee operating a vehicle or equipment as a part of his or her official duties receives a citation from the police.
 - A covered employee's actions cannot be completely discounted as a contributing factor to the accident, using the best information available at the time of the decision.
2. **Alcohol** – The intoxicating agent in beverage alcohol, ethyl, or other low molecular weight alcohol, including methyl and isopropyl alcohol.
 3. **Alcohol Concentration (or content)** – The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test.
 4. **Alcohol Use** – The consumption of any beverage, mixture, or preparation (including any medication) containing alcohol.
 5. **Breath Alcohol Technician (BAT)** – An individual who instructs and assists individuals in the alcohol testing process and operates and evidential breath-testing (EBT) device.
 6. **Certified Laboratory** – A laboratory which has been certified by the U.S. Department of Health and Human Services to perform job-related forensic testing for controlled substances and alcohol.
 7. **Children** – persons twelve (12) years of age and under.
 8. **Confirmation Test** – For alcohol testing, a second (2nd) test following the initial screening test with a result of 0.020 grams or greater of alcohol per 210 liters of breath, that provides quantitative data of alcohol concentration. For drug testing, it means a second (2nd) analytical procedure to identify the presence of a specific drug or metabolite which is independent of the initial screening test and which uses a different technique and chemical principle from that of the screening test to ensure reliability and accuracy.
 9. **Controlled Substances**- Drugs whose general availability is restricted or outlawed because of their potential for abuse or addiction in accordance with the Controlled Substances Act (D.C. Official Code § 48-901 *et seq.*). Controlled substances include narcotics, stimulants, depressants, hallucinogens, and cannabis. Controlled substances include any prescription drugs that are governed by the Controlled Substances Act.
 10. **Controlled Substance/Alcohol Test** – A procedure to determine if a blood, breath, or urine specimen contains drugs, alcohol, or the metabolites of drugs or alcohol.
 11. **Designated Employer Representative (DER)** – An employee authorized by the head of a covered District government agency (or designee) to take immediate action(s) to remove a covered employee from his or her safety-sensitive duties and make decisions required as part of the testing evaluation process. The DER is also

authorized to receive test results and other testing-related information for the head of the agency.

12. ***Drug and Alcohol Testing Program Coordinator (Program Coordinator)*** – The DCHR employee designated to serve as “communicator” between the District government, EAP professional, and the controlled substance and alcohol testing service contractor. The Program Coordinator is responsible for planning, directing, implementing, evaluating, and coordinating activities pertaining to this Policy.
13. ***Employee Assistance Program (EAP)*** – A health services counseling program established by the District government pursuant to D.C. Official Code § 1-620.07, that offers employees confidential assessment, counseling services and a referral to other resources for treatment. District government employees may obtain EAP services on their own, or be referred to the EAP by their supervisors (or by a union representing the employee, through the employee’s supervisor).
14. ***Evidential Breath Testing Device (EBT)*** – A device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath. The device shall be on NHTSA’s “Conforming Products List of Evidential Breath Measurement Devices.”
15. ***Management Employee*** – Any person whose functions include responsibility for project management and supervision of staff and the achievement of the project’s overall goals and objectives (See D.C. Official Code § 1-614.11 (5)).
16. ***Medical Review Officer (MRO)*** – A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by an employer’s drug testing who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual’s confirmed positive test result together with his or her medical history and any other relevant biomedical information.
17. ***Reasonable Suspicion*** – A reasonable belief by a properly trained manager or supervisor that an employee in a covered position is under the influence of an illegal substance or alcohol, to the extent that the covered employee’s ability to perform his or her duties is impaired.
18. ***Reasonable Suspicion Referral*** – Referral of an employee in a safety-sensitive position for testing by the District government for drug or alcohol.
19. ***Safety-Sensitive Position*** – A position with duties and responsibilities that require the incumbent to provide services that affect the health, safety, and welfare of children or youth, including direct care and custody of children or youth, and including the duties and responsibilities listed in Section VII of this Policy.
20. ***Screening Test (Initial Test)*** – In alcohol testing, this is an analytical procedure to determine whether the employee being tested has a prohibited concentration of alcohol in his or her system.
21. ***Split Sample Testing*** – The process of separating the urine specimen in drug testing into two (2) separate containers. The primary (first (1st) container) specimen is used for the immunoassay test and gas chromatography/mass spectrometry test. The split (second (2nd) container) specimen is used if the employee being tested requests

a confirmation test after being informed of an initial confirmed positive drug test. When tested, the split specimen test result is the test of record for the employee.

22. ***Suitability*** – The quality or state of being acceptable for District government employment with respect to the character, reputation, and fitness of the person under consideration.
23. ***Supervisor*** – see definition of “*Management Employee*.”
24. ***Third Party Administrator (TPA)*** – The service agent that provides or coordinates the provision of drug and alcohol testing and other related services under the Program. The TPA performs administrative tasks concerning the operation of the Program.
25. ***Treatment Contract*** – A formal rehabilitation plan for the treatment of drug or alcohol abuse which is developed in conjunction with and monitored by an EAP or treatment professional and signed by the affected covered employee.
26. ***Youth*** – persons between thirteen (13) and seventeen (17) years of age, inclusive.

X. PROHIBITED CONDUCT

Alcohol Use:

Although alcohol is a legal substance, its possession and use is prohibited during the performance of safety-sensitive functions under the following circumstances:

- **Concentration**: Performing safety-sensitive duties while having an alcohol concentration of 0.020 or greater as indicated by an alcohol breath test;
- **On-Duty Use**: Possessing a container or containers of alcohol in which the seal has been broken (this includes the possession of medicine(s) containing an alcohol prescription, or an over-the-counter medication containing alcohol in which the packaging seal is broken).
- **Pre-Duty Use**: Use of alcohol by a covered employee within four (4) hours prior to reporting to work to perform the duties of his or her position.
- **Accident**: Use of alcohol or any alcohol product by a covered employee within eight (8) hours following an accident, or prior to undergoing a post-accident test, whichever occurs first (when required to take a post-accident test).
- **Possession**: Possession of alcohol or a medication containing alcohol in a unsealed container in a District government vehicle, on government property, or in a District government facility during the covered employee’s tour of duty; and
- **On-Call**: Use of alcohol by a covered employee in a stand-by status, after the employee is informed by a supervisor that he or she may be called in to work. If called to work, the covered employee shall report that he or she has used alcohol within four (4) hours of the time of the call to report to duty. Otherwise, the employee is subject to the terms of the Policy as if in “duty” status.

Controlled Substances:

- Illegal Use: Any unauthorized use of a controlled-substance by a covered employee.
- Legal Use: The use of legally prescribed controlled substances by a covered employee while performing the official duties of his or her position.
- Failure to Report: Failure by a covered employee to report the medical use of controlled substances. The employee shall provide the immediate supervisor with a written statement from his or her doctor or medical practitioner describing any prescribed drug that may adversely affect the employee's ability to safely perform work responsibilities. No supervisor having such knowledge shall permit the employee in question to perform or continue to perform safety-sensitive functions.

Refusal to Submit to Testing:

- In accordance D.C. Official Code § 1-620.35 (a), refusal to submit to a drug test or breathalyzer shall be grounds for termination.

XI. EMPLOYEE AND SUPERVISOR TRAINING/EDUCATION

Employee/Supervisor Training:

Covered employees and their respective supervisors and managers are required to participate in mandatory alcohol and substance abuse training. Training will be provided by the DCHR, and it shall include all of the following:

- Mandatory Drug and Alcohol Testing of Employees who Serve Children or Youth Policy;
- The dangers associated with controlled substances use and abuse, and prescribed drug abuse;
- The warning signs of controlled substance use and abuse, alcohol abuse and other impairments;
- Steps to follow when impairment is detected;
- Resources for obtaining assistance; and
- The rehabilitation process.

Supervisor/Manager Training:

The required observations for alcohol or controlled substance reasonable suspicion testing shall be made by supervisors and managers of covered employees who have been trained in accordance with the following requirements:

- A manager or supervisor responsible for determining whether reasonable suspicion exists and for directing a covered employee to undergo alcohol or drug

testing shall receive at least sixty (60) minutes of training on alcohol misuse; and at least sixty (60) minutes of training on controlled substances' use and abuse.

- Training shall cover the physical, behavioral, speech, performance indicators of probable alcohol misuse and use and abuse of controlled substances, and confidentiality issues.
- Training shall be coordinated by appropriately designated personnel within the DCHR, or a qualified vendor approved by the DCHR.

XII. REQUIRED TESTING

A. Required Tests for Employees in Safety-Sensitive Positions:

Type of Test	Alcohol (Breath)	Drugs (Urine)
• Pre-Employment	No	Yes
• Random	Yes	Yes
• Reasonable Suspicion	Yes	Yes
• Post-Accident	Yes	Yes
• Return-To-Duty	Yes	Yes
• Follow-Up	Yes	Yes

B. Types of Testing:

1. Pre-Employment

- a. Drug test conducted after a tentative job offer to a safety-sensitive position is made but before the appointee's effective date of appointment; or before the effective date of appointment in the case of a current employee in a non-safety position who is being reassigned, transferred, or promoted into a safety-sensitive position;
- b. Failure of a new hire or current employee to complete the pre-employment testing process will result in the appointee's disqualification for the appointment, promotion, reassignment, or transfer to the safety-sensitive position for a period of twelve (12) months;
- c. No person may be hired, promoted, transferred, or reassigned into a safety-sensitive position unless the pre-employment test result is negative.

2. Random

- a. The selection of a covered employee for random drug or alcohol testing shall be made by a scientifically valid method.
- b. For random testing purposes, each covered employee shall have an equal chance of being tested every month when selections for testing are made.
- c. Tests shall be unannounced.
- d. Covered employees selected for random testing shall report to the testing site within one (1) hour of notification.

- e. Covered employees are subject to random drug or alcohol testing at any time: prior to, during, or immediately after performing safety-sensitive functions.
- f. If the covered employee selected for random drug or alcohol testing is on leave and unable to be tested after being randomly selected, he or she will still be subject to testing within the month. However, employees may only be tested within the period that their name is randomly selected, unless the test to be done is a continuation of an action where the MRO is involved.

3. Reasonable Suspicion

- a. A covered employee shall be required to submit to drug or alcohol testing when there is reasonable suspicion to believe that the employee has violated the alcohol or controlled substance prohibitions.
- b. A trained supervisor will make the initial observation necessary to require the test, which shall be based on such factors as the covered employee's appearance, behavior, speech, body odor, etc. The initial observation **shall** be substantiated by the observation by a second (2nd) trained supervisor before a test referral is made;
- c. A covered employee who is required to drive a motor vehicle to transport children or youth in the course of performing his or her official duties **shall be deemed to have given his or her consent** to the testing of his or her urine or breath for the purpose of determining drug or alcohol content whenever a supervisor has reasonable cause that such employee had been operating or in physical control of a motor vehicle within the District of Columbia while the employee's alcohol concentration was 0.08 grams or more per two hundred and ten (210) liters of breath; or while under the influence of an intoxicating liquor or any drug or combination thereof; or while the employee's ability to operate a motor vehicle is impaired by the consumption of intoxicating liquor.
- d. A written record shall be made of the observations leading to a reasonable suspicion test. The written record must be signed by the trained supervisors who made the observations and forwarded to the Program Coordinator within twenty-four (24) hours. A copy of this record should also be sent to the EAP;
- e. Special Procedures for Reasonable Suspicion Alcohol Testing:
 - (1) Reasonable suspicion alcohol test is authorized if the observations are made four (4) hours prior to, or during or immediately after the covered employee has performed safety-sensitive functions.
 - (2) If a reasonable suspicion alcohol test is not administered within two (2) hours following the observations, a record shall be prepared by the supervisor and maintained on file in the Program Office stating the reason(s) the test was not administered promptly.
 - (3) If a reasonable suspicion alcohol test is not administered within eight (8) hours following the observations, attempts to administer the test shall cease, and the supervisor shall prepare the record noted above, to be maintained on file in the Program Office.

- (4) Possession of an open container of alcohol while on duty or in a District government facility shall constitute grounds for reasonable suspicion alcohol testing.
- (5) Possession of a closed, sealed alcohol container does not necessarily constitute grounds for reasonable suspicion alcohol testing.
- (6) The presence of any alcohol in a District government vehicle warrants the need for reasonable suspicion testing.

4. Post-Accident

- a. As soon as possible following a vehicle accident where a covered employee has either been involved as a driver or in another direct fashion, such as controlling traffic in an intersection, the covered employee at the accident site shall be tested for alcohol and drugs when either:
 - (1) The accident results in loss of human life;
 - (2) One (1) or more motor vehicles (either District government or private) incurs disabling damage, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle;
 - (3) Anyone receives bodily injury which requires immediate medical attention away from the scene;
 - (4) The safety-sensitive employee operating a government vehicle or equipment receives a citation under District of Columbia or another law for a moving traffic violation arising from the incident;
 - (5) There is reasonable grounds to believe that such employee has been operating or in physical control of a motor vehicle within the District of Columbia while that employee's breath contains .08 percent or more, by weight, of alcohol, or while under the influence of an intoxicating liquor or any drug or combination thereof; or
 - (6) The actions of the safety-sensitive employee cannot be completely discounted as a contributing factor, using the best information available at the time of the decision.
- b. A covered employee shall be deemed to have given his or her consent to the testing of his or her urine or breath for the purpose of determining drug or alcohol content whenever a police officer arrests such employee for a violation of the law and has reasonable grounds to believe such employee to have been operating or in physical control of a motor vehicle within the District of Columbia while the employee's alcohol concentration was 0.08 grams or more per two hundred and ten (210) liters of breath; or while under the influence of an intoxicating liquor or any drug or combination thereof; or while the employee's ability to operate a motor vehicle is impaired by the consumption of intoxicating liquor.

- c. When a required post-accident test has not been administered within a reasonable timeframe following the accident, the following actions shall be taken:

Time Elapsed	Action Required
2 hours (alcohol)	If the covered employee has not submitted (reported) to the test by this time, the Program Coordinator shall prepare and maintain a file/record stating the reason a test was not promptly administered.
8 hours (alcohol)	If the covered employee has not submitted (reported) to the test by this time, attempts to administer the alcohol test shall cease, and a file/record as described above shall be prepared and maintained.
32 hours (controlled substance)	If the covered employee has not submitted (reported) to a controlled substance test by this time, the <u>Program Coordinator shall cease attempts to administer the test, and prepare and maintain the file/record described above.</u>

- d. Responsibility of Covered Employee Involved in Accident:

- (1) The covered employee shall remain available, or he or she may be considered to have refused to submit to testing.
- (2) The covered employee shall refrain from consuming alcohol for eight (8) hours following the accident, or until he or she submits to the alcohol test, whichever comes first.

Note: Nothing in this Policy should be construed to require the delay of necessary medical attention for injuries following an accident, or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

5. Return-to-Duty

- a. A covered employee who acknowledged and disclosed a drug or alcohol problem and completes a counseling and rehabilitation program shall be subject to return-to-duty testing (drug or alcohol test, as appropriate) before he or she is allowed to resume the performance of the duties of a safety-sensitive position.
- b. Return-to-duty testing must be negative in order for the covered employee to remain in the employ of the District government.

6. Follow-up

- a. A schedule of follow-up drug or alcohol testing shall be developed following successful completion of the counseling and rehabilitation program by a covered employee who acknowledged and disclosed a drug or alcohol problem and completes the counseling and rehabilitation program.

- b. A minimum of six (6) follow-up tests will be administered during the first twelve (12) months.
- c. If deemed necessary by the treatment professional, follow-up testing may extend up to sixty (60) months.
- d. A follow-up test may be conducted anytime a covered employee subject to follow-up testing is on duty for work.

XIII. TESTING PROCEDURES

A. Controlled Substance Testing Information

1. Testing shall be done in a site that affords visual and aural privacy to the covered employee being tested.
2. Testing is minimally for ten (10) controlled substance types: marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP), methamphetamines, benzodiazepines; methadone, propoxyphene, and barbiturates. An expanded opiates drug panel shall be included when testing occurs as a result of reasonable suspicion.
3. All controlled substances testing shall be done from urine specimens collected under highly controlled conditions. A split specimen collection shall also be done.
4. Protections for all covered employees being tested are built into the testing procedures. The only laboratories that can be used are those certified by the U.S. Department of Health and Human Services.
5. After the urine specimen has been collected and forwarded to the laboratory, the following tests may be performed:
 - (a) An immunoassay test (screening test) for the ten (10) classes of controlled substances noted above;
 - (b) A gas chromatography/mass spectrometry test (confirmation test) for each controlled substance indicated as present in the urine specimen by the immunoassay test conducted above; and
 - (c) An appropriate adulteration test, as recommended by the laboratory, in the event of suspected adulteration or substitution of a specimen.
6. If the covered employee being tested is unable to provide a sufficient quantity of urine, the collection site personnel shall instruct the employee to drink no more than forty (40) ounces of fluid within a three-hour (3-hour) period, and then attempt to provide a complete sample using a fresh collection container.
7. If the next sample is of a sufficient quantity, the collection is properly packaged and forwarded to the laboratory. However, if the next sample is of an inadequate quantity, the employee will be given an opportunity to submit a doctor's statement to the MRO that adequately explains the employee's inability to provide adequate urine.

8. The statement, if accepted by the MRO, shall remain on file and shall be updated as determined by the MRO. In the event that the employee fails to provide a doctor's statement, or should the doctor's statement provided be rendered unacceptable by the MRO, the employee will have failed to provide adequate urine or a valid medical explanation for the controlled substance test.
9. Failure to provide adequate urine for controlled substances testing without a valid medical explanation (as verified by the MRO) shall be considered as a refusal to submit to a test.

B. Direct Observation Collections

A direct observation collection (i.e., the collector or an observer accompanies the donor into the stall/toilet area and observes the act of urination) may occur only under very specific circumstances.

An observer of the same sex as the donor shall conduct a direct observed collection – there are no exceptions to this requirement.

Any required second collection under direct observation must be collected before the donor departs the site.

If a donor refuses to provide a specimen (original or second specimen collected) under direct observation, this constitutes a refusal to test.

When Direct Observations Are Required

1. The specimen temperature of the original specimen is outside the acceptable range.
2. The donor presents a specimen that appears to be adulterated (unusual smell, color, foaming, etc).
3. The collector observes materials brought into the collection site to be used for the purpose of adulteration, or the donor's conduct clearly indicates an attempt to tamper with his or her specimen.
4. The employer was required to direct the donor to have an immediate direct observation collection (with no advance notice) because (a) the laboratory reported to the MRO that the specimen was invalid and the MRO reported to the employer that there was not an adequate medical reason for this, or (b) the MRO reported that an original positive, adulterated, or substituted test result had to be cancelled because the test of the split could not be performed.

It is the responsibility of the Program Coordinator/DER to notify the collector when a direct observation collection is required. Prior to testing, the collector will then notify the donor and explain the reason.

C. Controlled Substance Test Results

1. If the result of the initial test is negative, the testing laboratory shall advise the MRO that the controlled substance test for the covered employee was negative.

No additional testing for the presence of drugs/drug metabolites shall be done, unless adulteration or substitution of the specimen is suspected.

2. If the result of the initial test is positive, a “confirmation test” (second (2nd) test) shall be performed. All controlled substances identified as positive on the initial test shall be further tested for confirmation using gas chromatography/mass spectrometry techniques.
3. Only specimens that are confirmed positive on the confirmation test are to be reported positive to the MRO for review. The confirmation test result shall be the official test result and the basis for any further action.
4. If the test result of the specimen is positive, the covered employee may request that the MRO send the split sample specimen to a different designated laboratory for testing. The employee shall make this request within seventy-two (72) hours of being notified of the positive test result. The testing of the split sample specimen shall be for the presence of controlled substances with no cut-off levels.
5. If the test result of the split sample specimen is negative, the test is considered negative, regardless of the results of the initial test, and the District government shall rescind administrative action(s) against the employee, if any.
6. The Program Coordinator is required to keep a record showing the type of test, date of collection, entity performing the collection, name of the laboratory, name of the MRO, and the test results of each covered employee. (Procedures related to the handling and custody of positive results from the MRO, are available upon request).

D. Specimen Integrity

The certified collector will take every precaution to ensure that a urine specimen is not adulterated or diluted during the collection process and that information on the urine bottle and the custody and control form can identify the individual from whom the specimen was collected. All of the following steps shall be taken:

1. Toilet bluing agents shall be placed in toilet tanks wherever possible.
2. Where practicable, there shall be no other source of water in the enclosure where urination occurs.
3. The covered employee to be tested shall be positively identified with picture identification.
4. The covered employee to be tested shall remove unnecessary outer garments such as coats or jackets that might conceal items or substances that could be used to tamper or adulterate a sample.
5. Personal belongings such as purses or briefcases shall remain outside the testing area.
6. The covered employee shall be instructed to wash and dry his or her hands.
7. The covered employee shall not have access to any adulterating agents.

8. The covered employee shall provide a specimen in the privacy of a stall.
9. The collection site person shall make note of any unusual behavior by the covered employee.

E. Alcohol Testing Information

1. Testing shall be done in a site that affords visual and aural privacy to the safety-sensitive employee being tested.
2. The covered employee to be tested shall be positively identified with picture identification.
3. A test may have two (2) separate parts – the initial test and the confirmation test.
4. If the initial test shows a reading less than 0.020, the test is recorded as negative.

F. Alcohol Test Results

1. If the initial test result is 0.020 or greater, a confirmation test is done after a fifteen-minute (15-minute) waiting period. The same Evidential Testing Device (EBT) may be used.
2. The confirmation test result shall be the official test result and the basis for any administrative action against the covered employee.
3. The covered employee shall receive a copy of the printed test results from the Breath Alcohol Technician (BAT).

XIV. RESPONSIBILITIES

A. Covered Employees

Testing procedures have been designed to be convenient to the covered employee, and are available for administration at various times and locations. Covered employees have a continued obligation to cooperate with managers, supervisors, employees, and vendors authorized to administer the Program.

Employees shall:

1. Become familiar with all sections of this Policy.
2. Remain free from the adverse effects of drug abuse or alcohol misuse.
3. Report any suspected substance abuse by any employee during work hours, including lunch periods. Any such report shall be made to the supervisor of the suspected employee, a DER, any other supervisor, or the Program Coordinator. The identity of the individual making the report will be held confidential to the full extent permitted by law. While a written statement may be required, retaliation against the employee providing the information shall not be tolerated.

B. Supervisors

Supervisors shall:

1. Make reasonable suspicion observations of covered employees in accordance with the procedures outlined in the Policy.
2. Call upon another supervisor or manager to independently verify a reasonable suspicion observation.
3. Prepare and sign a written report detailing the basis for reasonable suspicion.
4. Escort (or assign a designee to escort) the employee to the designated site for testing in the case of reasonable suspicion or following an accident.
5. Approve a covered employee's request for leave to enter detoxification or other inpatient rehabilitation (see Section VIII of this Policy).
6. Prohibit a covered employee from working until questions concerning any possible impairment are resolved. The supervisor may submit a referral for reasonable suspicion testing on subsequent days, as required.
7. Take the following actions upon receipt of an initial positive test result for a covered employee, or upon learning through self-disclosure by a covered employee of a drug or alcohol problem, as applicable:
 - (a) Immediately relieve from safety-sensitive duties any employee whose initial test indicates a positive result while the confirmation test is completed. Notify the Program Coordinator of the action taken;
 - (b) Provide complete information to the covered employee about the EAP, including the location, hours of business, telephone number and procedure for requesting leave to visit the EAP; or
 - (c) Provide treatment resources and referral information, or schedule mandatory EAP counseling appointments for the employee.
8. Ensure that the covered employee returns to duty if the confirmation test is negative.

C. Program Coordinator/Designated Employer Representative

1. Independently review the evidence to verify that reasonable suspicion exists for each employee identified by a supervisor for testing, including post-accident tests.
2. Approve and sign the Drug/Alcohol Testing order prior to referral to the designated testing site.
3. Advise agency HR personnel, supervisors and employees regarding this Policy.
4. Ensure that all aspects of the Program are carried out fairly, impartially, and in accordance with this Policy.

5. Schedule all drug and alcohol tests for covered employees and new hires.
6. Provide or arrange for mandatory training for supervisors and agency HR Advisors in the areas of random, reasonable suspicion, and post accident testing, to include the ability to recognize drug and alcohol symptoms.
7. Maintain all drug and alcohol test results.
8. Maintain a file on the covered employee documenting any information provided to the employee, the appointments arranged with the EAP, treatment plan compliance reviews, and other actions taken against the employee subsequent to disclosure of a drug or alcohol problem (see Section VIII of this Policy).
9. Notify the manager or supervisor of a positive drug or alcohol test, and advise the manager or supervisor to make the necessary appointment with the EAP or instruct the HR Advisor to coordinate administrative action in accordance with this Policy.
10. Serve as the Contracting Officer Technical Representative (COTR) in monitoring of the contract with the Third Party Administrator.
11. Prepare and submit all reports and statistical analyses to the appropriate parties, as required.

D. Human Resources (HR) Advisors

HR Advisors in covered District government agencies serve as the principal on-site contact person to communicate, coordinate, and carry out this Policy, and must be familiar with all aspects of the Policy.

HR Advisors shall:

1. Make a written request to the Program Coordinator for reasonable suspicion testing of a covered employee. Upon approval of the request, the covered employee's supervisor shall inform the employee that he or she is to proceed to the designated site for testing. The covered employee shall be accompanied by the supervisor (or designee).
2. Review and update the list of covered positions when new positions are classified or reclassified as safety-sensitive, and submit such changes to the Compensation and Classification Administration and Audit and Compliance Administration within the DCHR for appropriate action.
3. Make copies of the Policy available to all covered employees.
4. Coordinate with the DCHR for the granting of back pay to a covered employee for any period of leave taken or a period of suspension, if the employee's confirmation test is negative. Records of any suspension shall be purged from the employee's personnel records.

E. Employee Assistance Program (EAP) Professionals

The following responsibilities apply only in cases where a covered employee has

acknowledged and disclosed a drug or alcohol problem and undergoes and completes a counseling and rehabilitation program as specified in Section VIII of this Policy. Under such circumstances, EAP professionals shall:

1. Schedule an appointment for a covered employee upon official referral.
2. Obtain a copy of the drug test results from the Program Coordinator and of any other reports from the covered employee's supervisor pertaining to the employee's work status (i.e., attendance records, documentation of behavioral problems, etc.).
3. Conduct an assessment of the covered employee to determine the scope of the drug or alcohol problem.
4. Develop a treatment plan and make a referral for the employee to the appropriate treatment resource.
5. Implement a "*Treatment Contract*" with the covered employee specifying the terms of the treatment and all treatment and monitoring expectations.
6. Make recommendations to the supervisor regarding the covered employee's need to use leave for treatment.
7. Inform the Program Coordinator or agency HR Advisor whether the covered employee is complying with the *Treatment Contract* and EAP treatment recommendations.
8. Monitor the employee's treatment and inform the supervisor when the employee's *Treatment Contract* is successfully completed.
9. Make a written recommendation to the covered employee's supervisor, the Program Office, and the employing agency as to whether the employee should operate a District government vehicle or perform other safety-sensitive functions. [Generally, a covered employee must meet specific treatment related criteria established by the EAP prior to a recommendation that the employee may return to safety-sensitive duties.]
10. Make a recommendation whether a covered employee who has acknowledged and disclosed a drug or alcohol problem is ready to return to work in a safety-sensitive position upon meeting the following conditions:
 - (a) The covered employee has successfully completed the counseling and rehabilitation program and the terms and conditions of his or her *Treatment Contract*; and
 - (b) Return-to-work testing conducted (either through a treatment facility or a laboratory designated by the EAP) is negative.

F. Medical Review Officer (MRO)

1. Employer Notification

- (a) The MRO is responsible for reporting controlled substance test results to the Program Coordinator electronically via a password-protected online account, within three (3) workdays of the completion of the MRO's review and decision.
- (b) The MRO shall provide the following information to the Program Coordinator:
 - (1) The name of the individual for whom the test results are being reported;
 - (2) The type of test indicated on the custody form (random, pre-employment, etc.);
 - (3) The date and location of the test collection;
 - (4) The identity of the persons or entities performing the collection, the analysis of the specimen(s), and the identity of the person serving as the MRO for the specific test; and
 - (5) The verified results of the controlled substances test (positive or negative) and, if positive, the identity of the controlled substance(s) for which the test was verified positive.

2. Employee Notification

- (a) Prior to verifying a positive result, the MRO shall make every effort to contact the covered employee confidentially to give the employee the opportunity to discuss the test result.
- (b) If after making all reasonable efforts and documenting them the MRO is unable to reach the covered employee directly, the MRO shall contact the Program Coordinator, who shall direct the employee to contact the MRO within twenty-four (24) hours.

3. Records Retention

- (a) The MRO shall maintain dated records and notifications for positive controlled substances and alcohol test results, identified by individual, for a period of five (5) years.
- (b) The MRO shall maintain all dated records and notifications for negative and canceled controlled substances and alcohol test results, identified by individual, for a period of one (1) year.
- (c) The MRO shall not release individual controlled substances and alcohol test results of any covered employee without specific, written authorization, except to the Program Coordinator, or other identified officials with official authority over the Program.

XV. CONFIDENTIALITY OF TEST RESULTS

- A. All matters relating to test results of new hires and current employees pursuant to the Program shall be confidential. All records of new hires and current employees relating to drug and alcohol testing shall be kept by the DCHR in a place apart from employment applications or official personnel folders (OPFs).
- B. The results of a random test shall not be turned over to any law enforcement agency without the subject's written consent.
- C. Test results will be released only to the covered employee being tested and any other officials designated by the DCHR to receive such results.
- D. Drug and alcohol test results will be treated as highly confidential and will be disseminated only to persons with a "need to know" to recommend, initiate, or approve actions relating to violations of the Program and this Policy. Where there is no need to be informed of the specific findings, only the fact of a confirmed positive result shall be reported.
- E. The DCHR will maintain all alcohol and drug related testing information, including all test results and other appropriate records in a secure manner to prevent any disclosure of information to unauthorized personnel. The Program Coordinator will maintain a locked file system which will contain the testing information and records. Only the agency head of a covered agency (or designee) and EAP professional shall be informed of test results.
- F. Test results shall be a part of each covered employee's confidential Drug & Alcohol Testing file maintained by the DCHR. This file shall be maintained as confidential, separately from the employee's OPF or any other personnel file.

XVI. REFUSAL TO SUBMIT TO A TEST

- A. The following actions by a new hire or covered employee shall be considered as a refusal to submit to a drug or alcohol test:
 - (1) Failure to appear for a required test; or
 - (2) Failure to remain at the collection site for a required test; or
 - (3) Failure to provide specimen for a required drug or alcohol test;
 - (4) Failure to permit direct observation when required by the DER or collector; or
 - (5) Failure to provide sufficient urine for a drug test or adequate breath for alcohol testing without valid medical evidence and explanation of the inability; or
 - (6) Failure to take a second (2nd) test when required; or
 - (7) Failure to undergo a medical exam when required; or
 - (8) Failure to cooperate with any part of the testing process.

- B. Refusal to submit to a required drug or alcohol test shall be grounds for termination of employment.

XVII. ADMINISTRATIVE ACTION

- A. Pursuant to D.C. Official Code § 1-620.35 (a), the following shall be grounds for termination:
- (1) A confirmed positive drug test result;
 - (2) A positive breathalyzer; or
 - (3) Refusal to submit to a drug test or breathalyzer.
- B. Voluntary (i.e. self-referral) and mandatory participation in a treatment program upon self-referral shall not limit enforcement of a safety-sensitive employee's obligations to comply with this Policy nor restrict the District government's authority to take administrative action against the employee if he or she violates this Policy.
- C. A covered employee in a temporary position who tests positive for drug or alcohol shall be given information on applicable treatment programs and be terminated from employment.
- D. Administrative action resulting from violations to this Policy shall be taken in accordance with Chapter 16 of the regulations, General Discipline and Grievances; collective bargaining agreements (CBAs) for employees covered by such CBAs; or as applicable for the type of position and appointment the covered employee is serving under.

XVIII. REFERRALS FOR DRUG/ALCOHOL TREATMENT

As of the date of this Policy, provisions for drug or alcohol treatment are limited to covered employees who admit to a drug or alcohol problem upon receiving the Employee Notification Letter and are given one (1) opportunity to seek treatment. [Please refer to Section VIII of this Policy.]

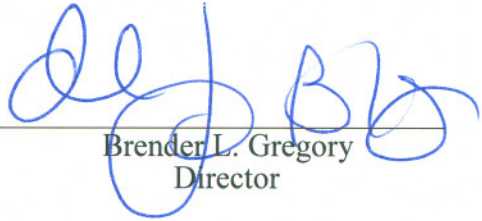
XIX. RECORDS RETENTION

- A. The Program Office shall maintain the following records for a period of five (5) years:
- (1) Results of the safety-sensitive employee's alcohol tests indicating an alcohol concentration of 0.020 or greater;
 - (2) Results of the safety-sensitive employee's verified positive controlled substances tests;
 - (3) Documentation of refusals to submit to tests;
 - (4) Laboratory equipment calibration documentation;
 - (5) Covered employee's *Treatment Contract* and referrals; and

- (6) Copies of each annual calendar year summary.
- B. Records related to the controlled substances and alcohol collection process and training shall be maintained by the Program Coordinator or designated representative for a period of five (5) years.
- C. Records related to the education and training of supervisors, safety-sensitive employees, and designated union officials shall be maintained by the Program Coordinator for the length of time the safety-sensitive employee performs specified functions and for two (2) years thereafter.
- D. Access to Records
 - (1) The Program Coordinator shall prepare and maintain an Annual Calendar Year Summary of controlled substances and alcohol testing and submit it to all relevant parties in a timely manner.
 - (2) The Program Coordinator shall not release information on any safety-sensitive employee contained in records required to be maintained under this Policy, except in the following circumstances:
 - (a) Records shall be made available to a safety sensitive employee's subsequent employer upon the receipt of a written request from the individual employee.
 - (b) Records shall be made available pursuant to a subpoena or in the case of a lawsuit, grievance, or other legally documented proceeding arising from the results of a controlled substances and/or alcohol test administered under this Policy.
 - (c) Records shall be made available pursuant to the provisions contained in section 3102 of Chapter 31 of the D.C. personnel regulations, Records Management and Privacy of Records; or in accordance with D.C. Official Code § 2-534.

XX. EFFECTIVE DATE

This Policy shall become effective on **Tuesday, June 10, 2008**.



Brender L. Gregory
Director